



**UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/480,850	06/07/95	PELLETT	P 1414.657

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HM21/0609

EXAMINER

LEE, D

ART UNIT

PAPER NUMBER

1643

DATE MAILED:

06/09/98

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
08/480,850

Applicant(s)

Phillip E. Pellett

Examiner

Danny Lee

Group Art Unit
1643



☒ Responsive to communication(s) filed on Mar 27, 1998

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

- ☒ Claim(s) 7, 8, and 16-21 is/are pending in the application.
Of the above, claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 7, 8, and 16-21 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claims _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☒ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☐ Notice of References Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s) _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

The Group and/or Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to **Group Art Unit 1643 (formerly Art Unit 1815)**.

The Group and/or Art Unit FAX NUMBER has changed to **703-308-3014, 703-305-4242 as of July 7, 1997**. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to *Group Art Unit 1643*.

Proposed correspondence for Examiner Lee should be faxed to the unofficial number **(703-305-7401-unofficial)**.

1. Receipt is acknowledged of applicants' amendment in Paper No. 20, filed 3/27/98.

Accordingly, claims 7-8, 16-21 are under consideration in the present application.

2. The rejection of claims 7-8, 16-21 under 35 U.S.C. § 103 as being unpatentable over Lee et al. (AA1) or Lee et al. (AW) in view of Luckow et al. (AO), Matsuura et al (AP) and further in view of Krishna et al (J. Gen. Virology, 1989) is **maintained**.

Applicant's arguments have been considered are not deemed persuasive. Applicant argues that the glycoprotein made by the AcDSMgG-1 is structurally different from Ac373'gG-1 is noted. The bands of the products of AcDSMgG-1 and Ac373'gG-1 are identified by human reactive sera and monoclonal antibodies. The monoclonal antibodies and human sera appears to react with both bands. Therefore the examiner is taking the position that the intensity differences

does not reflect a structural difference. Since the exact structure are not disclosed, one cannot assess patentable distinction between the proteins. From the gels of figure 2, both baculovirus expressed gG-1 proteins appear to be substantially the same. The reference does not disclose the amount of proteins loaded in the gel, the incubation time, the washing protocols, and other factors which could alter the western blot.

The Declaration of Dr. Pellett was considered but found unpersuasive.

In conclusion, the evidence do not establish a patentable distinction between the proteins. Luckow teaches that recombinant proteins produced in insect cells with baculovirus vectors are biologically active and for the most part appear to undergo post-translational processing (such as glycosylation) to produce recombinant products very similar to that of authentic proteins (page 51, column 2).

One of ordinary skill in the art at the time of applicant's invention would have been motivated to express the proteins in a baculovirus system since Luckow et al. and Matsuura et al. disclose the numerous advantages of baculovirus expressions systems, the importance of retaining an intact 5' nontranslated leader sequence of the polyhedron gene and one of ordinary skill would have had a reasonable expectation of success since Luckow et al. and Matsuura et al. both establish that the baculovirus system produces significant amounts of peptides and that such peptides "are in many cases, antigenically, immunologically, and functionally similar to their authentic counterparts." One of ordinary skill in the art at the time of applicant's invention would have a high expectation of success as taught by Krishna.

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Art Unit: 1643
Examiner: Danny Lee
Applicants: Pellet et al

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No claims are allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for response to this final action is set to expire **THREE MONTHS** from the date of this action. In the event a first response is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for response expire later than **SIX MONTHS** from the date of this final action.

Papers relating to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 located in Crystal Mall 1. The Fax number for Art Unit 1643 is (703) 305-3014. All Group 1600 Fax machines will be available to receive transmissions 24 hrs/day, 7 days/wk. Please note that the faxing of such papers must conform with the Notice published in the Official Gazette, 1096 OG 30, (November 15, 1989).

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to **Danny Lee** whose telephone number is **(703) 305-7245**. The Examiner can normally be reached on Monday-Friday from 8:00 AM-4:30 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, **Marian Knode**, can be reached at **(703) 308-4311**.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Danny Lee
June 7, 1998
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Marian C Knode
MARIAN C. KNODE
SUPERVISORY PATENT EXAMINER
GROUP 1800/617